IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY AND COUNTY OF DENVER; WASTE MANAGEMENT OF COLORADO, INC.; CHEMICAL WASTE MANAGEMENT, INC.; ADOLPH COORS COMPANY; CONOCO, INC.; METRO WASTEWATER RECLAMATION DISTRICT; ROCHE COLORADO CORPORATION, successor to Syntex Chemicals, Inc.; and S.W. SHATTUCK CHEMICAL CO.,INC.,

Defendants.

CIVIL NO. 02-Z-1341 (MJW)

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency (hereinafter "EPA"), alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9607 and 9613(g)(2), and 28 U.S.C. § 2201, for (i) reimbursement of response costs incurred and to be incurred by

the United States in response to the release or threat of release of hazardous substances from the Lowry Landfill Superfund Site located in Arapahoe County, Colorado (the "Site"), and (ii) a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. § 1391(b) and (c), because the claims arose within the District of Colorado.

DEFENDANTS

4. The City and County of Denver is a political subdivision of the State of Colorado which, at all times material hereto, did business and continues doing business in Colorado.

5. Waste Management of Colorado, Inc. is a Colorado corporation which, at all times material hereto, did business and continues doing business in Colorado.

6. Chemical Waste Management, Inc. is a Delaware corporation which, at all times material hereto, did business

and continues doing business in Colorado.

7. Conoco, Inc. is a Delaware corporation which, at all times material hereto, did business and continues doing business in Colorado.

8. Adolph Coors Company is a Colorado corporation having its principal place of business in Golden, Colorado.

9. Metro Wastewater Reclamation District is a political subdivision of the State of Colorado which, at all times material hereto, did business and continues doing business in Colorado.

10. Roche Colorado Corporation, a Delaware corporation, is a successor-in-interest to Syntex Chemicals, Inc. which, at all times material hereto, did business in Colorado.

11. S.W. Shattuck Chemical Company, Inc. is a Colorado corporation which, at all times material hereto, did business and in Colorado.

12. Each of the defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

13. The Site consists of approximately 480 acres of land in unincorporated Arapahoe County, Colorado, approximately 15 miles southeast of downtown Denver.

14. The Site is owned by Defendant City and County of

Denver which, from 1966 until 1980, operated a municipal landfill at the Site, accepting liquid and solid municipal and industrial wastes, including sewage sludge.

15. Beginning in 1980, Defendant Waste Management of Colorado, Inc., the current operator of the Site, took over landfill operations at the Site under a contract with Denver.

16. From about 1966 through 1980, the defendants identified in paragraphs 7 through 11 (collectively, the "Generator Defendants") arranged for hazardous substances to be disposed of at the Site.

17. During the same time period, Chemical Waste Management, Inc., accepted hazardous substances for transport to the Site for disposal.

18. Due to the hazardous substance contamination found at and near the Site, EPA evaluated the Site for inclusion on the CERCLA National Priorities List ("NPL") and added the Site to the NPL in 1984, making the Site eligible for cleanup with federal funds. The NPL, promulgated at 40 C.F.R. Part 300, App. B, identifies those facilities nationwide at which releases or threatened releases of hazardous substances are found to present the greatest threats to the public health and the environment. 42 U.S.C. § 9605(a)(8); 40 C.F.R. §§ 300.66, 300.68.

19. Preliminary investigations of the Site began in the mid-1970s. EPA conducted a preliminary assessment of the Site in June 1982, and a Site inspection in August 1982. EPA also conducted a Phase I Remedial Investigation ("RI") from February 1985 to April 1986, and a Phase II RI from January 1987 to October 1989.

20. In 1988, EPA divided the Site into six Operable Units ("OUs"), or study areas. These were grouped according to the contaminated media which they address: OUs 1 & 6 address shallow ground water, subsurface liquids, and deep ground water; OUs 2 & 3 address landfill solids and landfill gas; and OUs 4 & 5 address soils, surface water, and sediments. Beginning in 1988, groups of Potentially Responsible Parties at the Site performed Remedial Investigations/Feasibility Studies ("RI/FSs") for certain of the Operable Units.

21. The studies and investigations described in paragraphs 19 and 20, above, revealed the presence of hazardous substances, including volatile organic compounds and heavy metals, at the Site. All of these substances are listed as hazardous substances under 40 C.F.R. § 302.4.

22. The release and threatened release of hazardous substances into the environment posed, and continues to pose,

a threat to human health and the environment from contaminated ground water, landfill gas, contaminated seepage and surface water, drums, drum contents, and contaminated soils at the Site.

23. In March 1994, EPA issued a Record of Decision ("ROD") to undertake a remedial action pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), to clean up the Site. The remedial alternative selected in the ROD includes containment, collection, and treatment of contaminated ground water using an on-site treatment plant; containment, collection, and treatment of landfill gas using enclosed flare technology; use of a drainage and underground collection system to address contaminated seepage and surface water; treatment and off-site disposal of drums, drum contents, and contaminated soils; and containment of landfill mass solids and soils.

24. In August 1995, EPA issued an Explanation of Significant Differences ("ESD") which constituted a minor modification of the ROD. In October, 1997 EPA issued a Second ESD which modified the remedy for ground water selected in the ROD. Under the Second ESD, ground water from the Site, after being treated in the on-site treatment plant to meet industrial pre-treatment standards, will be piped off-site for

treatment of inorganics and further treatment of remaining organic contaminants.

25. The sitewide remedial action began in January 1996. The action is ongoing and is being performed by certain of the defendants pursuant to a Unilateral Administrative Order issued by EPA in 1994.

26. The United States has expended response costs, including enforcement costs, and continues to expend additional response costs for response activities at the Site. To date, the United States has incurred approximately $12.3 million in unreimbursed response costs.

27. The United States sent demand letters to the defendants to notify them of their obligation to make restitution to the United States for costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at the Site.

CLAIM FOR RELIEF

28. The allegations of Paragraphs 1 through 27 are realleged and incorporated herein by reference.

29. The substances identified in paragraph 25 are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

30. The Site is a "facility" within the meaning of

Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

31. During the operation and ownership of the Site by Defendant City and County of Denver and during the operation of the Site by Defendant Waste Management of Colorado, Inc., hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the Site.

32. There has been an actual release or threatened release of hazardous substances into the environment at and from the Site within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

33. Defendant City and County of Denver is an owner of the Site from which there has been an actual or threatened release of hazardous substances. Defendant City and County of Denver also owned and operated the Site at the time of disposal of hazardous substances at the Site. The City and County of Denver is liable for the United States' response costs pursuant to Sections 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(a)(1) and 9601(a)(2).

34. Defendant Waste Management of Colorado, Inc., was an operator of the Site at the time of disposal of hazardous substances at the Site and is liable for the United States' response costs pursuant to Sections 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(a)(1) and 9601(a)(2).

35. The Generator Defendants identified in paragraphs 7 through 11, or predecessors to each such defendant, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by said defendants, or their predecessors. Hazardous substances of the type sent by each Generator Defendant for disposal or treatment were found at the Site. The Generator Defendants are liable for the United States' response costs pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

36. Defendant Chemical Waste Management, Inc. accepted hazardous substances for transport to the Site for disposal or treatment and selected the Site for disposal or treatment. Chemical Waste Management, Inc. is liable for the United States' response costs pursuant to Section 107(a)(4) of CERCLA, 42 U.S. C. § 9607(a)(4).

37. The United States has incurred and will continue to incur response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, to respond to the release or threatened release of hazardous substances at the Site.

38. The response costs were incurred and will be

incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

39. Each and every defendant named herein is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs, including investigation and enforcement costs, incurred and to be incurred by the United States in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, plaintiff United States of America, prays that this Court:

1. Enter judgment against each and all of the defendants named herein, jointly and severally, in favor of the United States for all costs incurred by the United States for response activities related to the Site, including pre-judgment interest;

2. Enter a declaratory judgment for the United States pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on defendants' liability for response costs that will be binding on any subsequent action to recover further response costs;

3. Retain jurisdiction over this matter until such time as all response measures have been completed;

4. Award the United States its costs of suit herein;

5. Grant such other relief as is deemed appropriate.

Respectfully submitted,

U. S. DEPARTMENT OF JUSTICE

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